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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ELIZABETH WEISS,
Plaintiff,
v.
STEPHEN PEREZ, et al.,
Defendants.

Case No. 22-cv-00641-BLF

**ORDER DENYING MOTION FOR
EXPEDITED DISCOVERY**

[Re: ECF No. 27]

Before the Court is Plaintiff Elizabeth Weiss’ motion for expedited discovery. ECF No. 27 (“Mot.”). Defendants, all San Jose State administrators, oppose the motion on several grounds. ECF No. 40 (“Opp.”). Defendants contend that discovery is not warranted (1) until the Court rules on their motion to dismiss (which they say should be granted without leave to amend, negating the need for discovery); (2) because Weiss’ alleged irreparable injury—inability to access the Native American remains after their upcoming repatriation—is of her own doing due to her delay in pursuing the relief sought in this lawsuit; and (3) because the discovery Weiss seeks is unduly burdensome and expensive in the short period of time before the motion for preliminary injunction is heard. *Id.* The Court need not reach the first two arguments because it agrees with the third argument.

Federal Rule of Procedure 26(d) provides that a party “may not seek discovery from any source” prior to conducting the discovery conference required by Rule 26(f), which takes place no later than 21 days before the initial case management conference. “Courts within the Ninth Circuit generally use the ‘good cause’ standard to determine whether to permit discovery prior to a Rule 26(f) conference.” *Apple Inc. v. Samsung Elecs. Co.*, 2011 WL 1938154, at *1 (N.D. Cal. May 18, 2011). “Good cause may be found where the need for expedited discovery, in consideration of

1 the administration of justice, outweighs the prejudice to the responding party.” *Semitool, Inc. v.*
 2 *Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). Factors courts consider include
 3 whether a preliminary injunction is pending, the breadth of the discovery requests, the purpose for
 4 requesting the expedited discovery, the burden on the defendants to comply with the requests, and
 5 how far in advance of the typical discovery process the request was made. *American LegalNet,*
 6 *Inc. v. Davis*, 673 F. Supp. 2d 1063, 1067 (C.D. Cal. 2009).

7 The Court finds that these factors weigh against expedited discovery here. Weiss seeks
 8 (1) three depositions of Defendants Walt Jacobs, Roberto Gonzales, and Charlotte Sunseri; and
 9 (2) materials responsive to five requests for production. *See* Mot., Exs. 1-4. Weiss characterizes
 10 this discovery as “narrow and specific,” *id.* at 5, but the Court disagrees given the procedural
 11 posture of this case. Defendants cannot be expected to search for, collect, and review a potentially
 12 expansive universe of documents and other media and defend three depositions in only a few short
 13 weeks. Even if that discovery did occur, use of any of its fruits would require Weiss to withdraw
 14 her already-filed motion for a preliminary injunction and incorporate any new evidence and
 15 argument into revised and refiled motion, as no new evidence may be cited in a reply brief. *See*
 16 *Rivera v. Saul Chevrolet, Inc.*, 2017 WL 3267540, at *6 (N.D. Cal. Jul. 31, 2017); *cf. Interserve,*
 17 *Inc. v. Fusion Garage PTE, Ltd.*, 2010 WL 143665, at *2 (N.D. Cal. Jan. 7, 2010) (“Expedited
 18 discovery will allow plaintiff to determine whether to seek an early injunction.”). This could not
 19 be accomplished prior to the June 2022 repatriation of the Native American remains at issue in this
 20 case, and certainly not on the parties’ stipulated expedited schedule that the Court just yesterday
 21 approved and accommodated. *See* ECF No. 39.

22 Accordingly, Weiss’ motion for expedited discovery is DENIED.

23 **IT IS SO ORDERED.**

24
 25 Dated: March 1, 2022

26 

27 BETH LABSON FREEMAN
 28 United States District Judge